International Association of Heat and Frost Insulators and Asbestos Workers Local Union No. 27, AFL-CIO *and* Master Insulators Association, Inc. Case 17-CB-2319

September 7, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On January 21, 1982, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the Charging Party filed exceptions and a brief in support thereof and in opposition to Respondent's exceptions, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herewith and to adopt his recommended Order.

The Administrative Law Judge found that Respondent violated Section 8(b)(1)(B) and (3) of the Act by refusing to bargain with the Charging Party Association concerning apprenticeship training, by refusing to meet with the representatives designated by the Association to represent it on the Joint Apprenticeship Committee, and by threatening to strike as a means of dictating to the Association whom it should or should not select to represent it for purposes of collective bargaining. While we agree with these conclusions, we do so for the following reasons.

As more fully set forth by the Administrative Law Judge, Respondent represents the insulation mechanics, apprentices, and improvers employed by the employer-members of the Association. The collective-bargaining agreement which was in effect from October 14, 1977, through October 13, 1980, provided for the establishment of a Joint Apprenticeship Committee (JAC) composed of three representatives from the Association and three from the Union, whose function was to formulate, adopt, and administer an apprenticeship program. The apprenticeship program was to be financed by payments from a trust fund, also provided for in the contract, which was funded by Association contributions. Such trust funds are authorized by Section 302(c)(5) of the Act.

Historically, although not called for in the contract, individuals designated by the Association to serve as its JAC representatives also served as trustees for the training fund. In the early months of 1979, however, the Association concluded that the trust fund was operating without a written trust agreement, in violation of Section 302(c)(5), and directed its three trustees, Wilkerson, Beatty, and Drager, to resign their trustee positions while expressly retaining their status as Association representatives on the JAC. In subsequent months, Respondent refused to convene a meeting of the JAC so long as Wilkerson was present, and as a result the apprenticeship program was crippled.

The Administrative Law Judge, relying, *inter alia*, on *United Mine Workers of America, Local No. 1854 (Amax Coal Company, a Division of Amax, Inc.*,[1] noted that trustees of Section 302(c)(5) trust funds are not, in that capacity, collective-bargaining representatives within the meaning of Section 8(b)(1)(B) of the Act. He found, however, that, having resigned their trustees positions, the Association's representatives on the JAC were 8(b)(1)(B) collective-bargaining representatives, and, accordingly, that Respondent's refusal to meet with them violated Section 8(b)(1)(B) and (3) of the Act. Respondent contends that *Amax* is precedent for just the opposite conclusion, since, in a portion of the Board's decision which the Administrative Law Judge did not discuss, the members of a joint training committee were found not to be 8(b)(1)(B) bargaining representatives.[2] Accordingly, Respondent contends that no violation of that section or Section 8(b)(3) may be found in this proceeding.

It is clear that one who serves as a trustee of a 302(c)(5) trust is not, in that capacity, acting as an 8(b)(1)(B) bargaining representative. *Amax Coal Company, supra.* Wilkerson, Beatty, and Drager having resigned as trustees, however, the inquiry must proceed to the nature of their functions as JAC representatives. The duties of the JAC members are set forth in article XX of the collective-bargaining agreement.[3] This provision essentially

[1] 238 NLRB 1583 (1978), enfd. as modified 614 F.2d 872 (3d Cir. 1980), modification reversed 453 U.S. 322 (1981).

[2] 238 NLRB at 1615-17.

[3] That section provides:

ARTICLE XX
APPRENTICESHIP TRAINING PROGRAM

The parties hereto agree to administer an apprenticeship training program which will be registered with the Federal Bureau of Apprenticeship and Training. This program will be administered by a Committee, hereinafter called the Joint Apprenticeship Committee, which will consist of three (3) representatives of the Employers and three (3) representatives of the Union. This Committee shall formulate and adopt an apprenticeship program and shall institute other

Continued

delegates to the JAC responsibility for fleshing out the collective-bargaining agreement by formulating, adopting, and administering an apprenticeship program. The role of the JAC is thus distinguishable from that of the training committee in *Amax*, the function of which was merely to advise the various companies in the multiemployer association about employee training programs. Each of the employers there was free to disregard the committee's advice, and each was to develop its own program. Committee members were accordingly found by the Board not to be 8(b)(1)(B) bargaining representatives. Here, we find that in the process of reaching agreement on the specification and operation of the program which they are bound to formulate and implement, the JAC members necessarily act as collective-bargaining representatives within the meaning of Section 8(b)(1)(B).

While we reject Respondent's contention that the members of the JAC were not 8(b)(1)(B) bargaining representatives, we agree with Respondent that the issue of their status is central to this case. It is for this reason that we find no merit in Respondent's argument that this case should have been deferred to the grievance-arbitration procedure of the collective-bargaining agreement. Although interpretation of the contract provides evidence concerning the JAC members' duties, the crucial determination of whether such duties constitute JAC members as 8(b)(1)(B) bargaining representatives is necessarily one of statutory construction, and therefore is a determination properly made by the Board.[4]

Respondent argues that it was privileged to refuse to meet with the JAC after Wilkerson, Beatty, and Drager resigned from their trustee positions and new trustees were appointed because this departure from the traditional practice of having the same individuals function both as JAC members and trustees violated the collective-bargaining agreement.[5] The Administrative Law Judge, treating this argument as an allegation that the Association's conduct constituted an unfair labor practice, rejected it as being barred by Section 10(b) of the Act. We find it unnecessary to decide whether Respondent's defense was barred by Section 10(b) because, even were we to consider such evidence, we would find that the Association was not required to name the same three individuals to serve as both JAC members and trustees. Since, as found above, the JAC representatives were collective-bargaining representatives within the meaning of Section 8(b)(1)(B) of the Act, the Association was under no duty to bargain concerning their designation, and was free to alter its past practice. Moreover, we note that the committee with which Respondent refused to meet—the JAC—was unchanged in composition by the Association's decision to appoint separate trustees. Thus, there is a hollow ring to Respondent's contention that its refusal to meet with the JAC stemmed from that committee's illegitimate composition. Instead, like the Administrative Law Judge, we find that Respondent objected to Wilkerson's presence on the committee, and was attempting to dictate to the Association whom its collective-bargaining representatives would be by refusing to meet with the JAC so long as Wilkerson was a management representative. By this conduct Respondent violated Section 8(b)(1)(B) and (3) of the Act. This is so because Respondent's refusal to meet with the Association's lawful bargaining representatives to bargain collectively violated Section 8(b)(3). That refusal, therefore, as a matter of law, coerced and restrained the Association. The object of that coercion was the identity of the Association's bargaining representatives; accordingly, Respondent's actions also violated Section 8(b)(1)(B).

Upon the expiration of the collective-bargaining agreement, in October 1980, Respondent struck the Association employers. Among the issues in dispute was Respondent's demand that trustees for the training fund appointed by the Association be "industry-related." The Association ultimately acceded to this demand, and the parties' new collective-bargaining agreement includes such a provision. In its exceptions to the Administrative Law Judge's Decision, the Association urges that we should order this language deleted from the agreement. This we decline to do. The complaint does not allege that this provision is unlawful, and, as the

rules and procedures which will insure only qualified and acceptable apprentices are retained in this program. Qualifications for acceptance to this program will be established and the use of tests and other media shall be utilized to determine qualifications of applicants.

The number of Apprentices in this program shall be sufficient at all times to provide all Employers signatory to this Agreement with not less than one (1) Apprentice to four (4) Mechanics beyond which the Apprenticeship Committee shall recognize the need for an adjusted ratio depending upon the future needs any [sic] operating requirements of the Employers.

This program shall comply with relevant Federal, State, and Local laws and will be administered without regard to race, creed, sex, color, or national origin.

This program to be financed by payments as stipulated in ARTICLE VIII, SECTION 7. Any increase or decrease warranted as applicable to be decided by the Joint Apprenticeship Committee.

Effective October 14, 1969, funds to reach the bank no later than the fifteenth (15th) of the month following the month covered by the report. (Ref: Article VIII, Section 7).

[4] *New York Typographical Union No. 6 (The New York News, Inc.)*, 237 NLRB 1241, 1243 (1978); Member Hunter does not necessarily adopt *in toto* the rationale set forth in that decision. However, he does agree that deferral is inappropriate in the circumstances of the instant case.

[5] The Association initially refused to appoint new trustees, but eventually did so under a court order obtained by Respondent.

Administrative Law Judge noted, at no time before filing her brief did counsel for the General Counsel move to amend the complaint or otherwise intimate a desire to bring any evidence relating to this issue into the case as other than background material. As the matter was not fully litigated, we need not pass on the merits of the Association's contentions.[6] We note, however, as discussed above, that the trustees of a Section 302(c)(5) trust fund are not collective-bargaining representatives within the meaning of Section 8(b)(1)(B), and thus Respondent was free during contract negotiations to insist upon the qualifications of these individuals.[7]

THE REMEDY

Having found that Respondent violated Section 8(b)(1)(B) and (3) of the Act by refusing to bargain in good faith with Master Insulators Association, Inc., concerning the apprenticeship training program, by refusing to meet with those representatives designated by the Association to represent it, and by threatening to strike as a means of dictating to the Association whom it should or should not select to represent it for purposes of collective bargaining, we shall order Respondent to cease and desist from engaging in such conduct, and to take certain affirmative action designed to effectuate the purposes of the Act.

CONCLUSIONS OF LAW

1. Master Insulators Association, Inc., and its employer-members, jointly and severally, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent International Association of Heat and Frost Insulators and Asbestos Workers Local Union No. 27, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, Respondent has been the exclusive bargaining representative within the meaning of Section 9(a) of the Act for the unit of insulation mechanics, apprentices, and improvers employed by the employer-members of the Association.

4. By refusing to bargain in good faith with Master Insulators Association, Inc., concerning the apprenticeship training program, by refusing to meet with those representatives designated by the Association to represent it on the Joint Apprenticeship Committee, and by threatening to strike as a means of dictating to the Association whom it should or should not select to represent it for purposes of collective bargaining, Respondent has violated and is violating Section 8(b)(1)(B) and (3) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, International Association of Heat and Frost Insulators and Asbestos Workers Local Union No. 27, AFL-CIO, Raytown, Missouri, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Kansas City, Kansas, on March 10, 1981. The charge was filed on September 18, 1980, by Master Insulators Association, Inc. (herein Association).

The complaint issued on October 17, and alleges that International Association of Heat and Frost Insulators and Asbestos Workers Local Union No. 27, AFL-CIO (herein Respondent), has violated Section 8(b)(1)(B) and (3) of the National Labor Relations Act, as amended (herein Act), respectively, since late March 1980, "and in particular on or about September 5 and 17, 1980," by "refus[ing] to meet and negotiate with the Association's designated representatives on the Joint Apprenticeship Committee," and by "fail[ing] and refus[ing] to meet and bargain with the Association concerning the apprenticeship training program."

The complaint alleges that Respondent further violated Section 8(b)(1)(B) on or about September 5, 1980, by "threaten[ing] to strike if the Association insisted upon negotiating with regard to the apprenticeship training program through its designated representatives on the Joint Apprenticeship Committee."[1]

[6] In agreeing that the matter was not fully litigated, Member Fanning notes that this fact distinguishes the instant case from *Plastic Film Products, Corp.*, 238 NLRB 135 (1978), relied on by the Administrative Law Judge.

[7] Chairman Van de Water relies solely on the fact that such matter was neither alleged nor litigated and finds it unnecessary to reach the issue whether the qualifications of Association-appointed trustees is a mandatory subject of bargaining.

[1] Counsel for the General Counsel asks in her brief that certain of Respondent's conduct in contract negotiations, most if not all of which occurred after issuance of the complaint, also be found to have violated Sec. 8(b)(1)(B) and (3), and that the remedy be fashioned accordingly. This request is rejected inasmuch as she, at no time before filing her brief, moved to amend the complaint, or otherwise intimated a desire to bring such conduct into the case for other than background purposes. *Plastic Film Products Corp.*, 238 NLRB 135, fn. 2 (1978).

I. JURISDICTION

The Association is comprised of insulation contractors in the construction industry, for whom it negotiates and administers collective-bargaining agreements with various labor organizations, including Respondent. The employer-members of the Association, in the aggregate, annually purchase and cause to be delivered across state lines materials valued in excess of $50,000, and annually transport across state lines goods and services valued in excess of $50,000.

The Association and its employer-members, jointly and severally, are employers within Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent is the bargaining representative of the insulation mechanics, apprentices, and improvers employed by the members of the Association.[2] The most recent past labor contract between Respondent and the Association covering those employees ran from October 14, 1977, through October 13, 1980.

Article 8, section 7, of the labor contract required that the members of the Association "pay to the Trustees of the MO-KAN Asbestos Workers' Apprenticeship Training Fund at the rate of 5 cents per hour worked by the Employee, for the purpose of said Fund as set out in the Trust Agreement." Article 20 of the contract provided for the administration of an apprenticeship training program "by a Committee . . . which will consist of three (3) representatives of the Employers and three (3) representatives of the Union," with the program "to be financed by payments as stipulated in Article 8, Section 7." Until the events in question, the same people always served both as trustees of the training fund and as members of the committee administering the training program. Nothing in the contract, however, expressly required that this be the case.

The administering committee is commonly known as the Joint Apprenticeship Committee (herein JAC). Without its functioning, the apprenticeship training program is in many respects paralyzed. Among other things, new apprentices cannot be enrolled in the program, nor can those completing it be certified as journeymen. The JAC customarily met quarterly, but has not met or functioned since September 5, 1979, at least, to the time of the present hearing.

Effective January 1, 1979, the Association's designates as trustees and JAC members were William Wilkerson, Billy Beatty, and Larry Drager. Wilkerson, newly designated, was a labor relations professional, being executive director of the Association and coordinator of labor relations for the Builders' Association of Missouri. Beatty and Drager were employed in the insulation industry.

[2] It is concluded that this is an appropriate unit for purposes of the Act.

In the ensuing few months, it was ascertained that there was no written trust agreement of the sort contemplated by article 8, section 7, of the labor contract. A meeting of the trustees/JAC members on September 5, 1979, addressed but did not resolve the problem. By identical letters dated October 3, Wilkerson, Beatty, and Drager informed Respondent and the Association that, because of a "belief that the trust fund for the MO-KAN Asbestos Workers' Apprenticeship Training Fund . . . is being handled in a fashion which is imprudent, improper, and illegal," each thereby was "resign[ing] any and all involvement . . . on the said implied trust fund."

The letters added that the three "will continue to serve in the capacity as an employer's representative on the Joint Apprenticeship Committee and serve *only* in that capacity"; and requested a meeting of the JAC, to be held October 15, "for the specific purpose of fulfilling the committee's mandate" under the labor contract, "and to fulfill any other responsibilities [it] may have."

The requested October 15 meeting did not materialize; and as earlier noted, there were no subsequent JAC meetings to the time of hearing. A few days after the resignation letters, Beatty had a telephone conversation with Ben Blair, Respondent's business agent and one of its designates as trustee/JAC member, in which Blair declared that Wilkerson's presence on the JAC was a "stumbling block" preventing the apprenticeship program from "moving."

Management trustees of the health and welfare, pension, and vacation trust funds also had resigned. Respondent sued in the fall of 1979 to compel the Association to fill the vacancies left by several resignations. With that as a prod, the Association in December 1979 appointed James Duvall, Charles Fowler, and Jeffrey Kean to be management trustees of the training fund, and the other funds as well. Wilkerson, as executive director of the Association, informed Respondent of this by letter dated December 19. The letter made no reference to the JAC.

Blair responded to Wilkerson's letter by one dated December 21. After acknowledging Wilkerson's letter, Blair's stated:

> I can only assume that Bill Beatty, Larry Drager, and yourself are no longer members of the Apprenticeship Training Committee as the standards read three from Management and three from Labor.
>
> If you have resigned, I would appreciate receiving your resignation letters.

Wilkerson responded by letter dated January 2, 1980, stating in relevant part:

> Please be advised that Mr. James T. Duvall, Mr. Charles W. Fowler, and Mr. Jeffrey B. Kean have been appointed by the Master Insulators Association for the purpose of serving as trustees to the Mo-Kan Asbestos Workers' Apprenticeship Training Trust Fund as called for under Article VIII, Section 7, . . . of the Trade Agreement.
>
> This is to further advise that Mr. Larry Drager, Mr. Bill Beatty, and I will continue to serve as rep-

> resentatives of the Master Insulators Association on the Joint Apprenticeship Committee for the purpose of administering an apprenticeship training program as called for under Article XX . . . of the Trade Agreement.
>
> Ben, I trust that the above will clear up any misunderstanding . . . as to" who appointed from Management was to serve in what capacity. Should there be any further misunderstanding or question on the matter, please feel free to give me a call.

Wilkerson's letter closed by "request[ing] a meeting of the Joint Apprenticeship Committee on either of the following four dates: January 11, 14, 18, or 25th." Blair's response, if any, is not disclosed by the record.

By letter dated February 26, 1980, the president of the Association, William Rue, informed Blair, among others, that, at the February meeting of the Association, Duvall, Fowler, and Kean had been appointed to remain through 1980 as management trustees of the training fund, with Wilkerson, Beatty, and Drager continuing on the JAC.

In March 1980, Beatty telephoned Blair, asking if it would be "possible to get the apprenticeship program back on track." Blair was less than enthusiastic, commenting that Wllkerson had "no business being on the committee." Beatty called Blair again about a month later, asking about "the apprenticeship problem" and assuring Blair that he would do everything "in [his] power to get this thing rolling." Blair responded that he had "many other things to do that was more important," and that he would "get to it when he could. Beatty called Blair about once a month thereafter until perhaps August, expressing concern that the JAC resume functioning "so we could get back in ratio."[3] Blair was unmoved.

In June 1980, Blair telephoned Drager, proposing a meeting of union and association representatives to discuss matters of common concern. Drager asked that the apprenticeship situation be among the items considered, prompting Blair to remark, "Why do you not arrange it so you could leave Mr. Wilkerson at home?" Drager answered that, Wilkerson being on the JAC, that would be difficult to do. Blair countered that Wilkerson's presence would be "anti-productive," and that they could meet without him as they had done "in the old days." Drager closed the conversation by saying he would check with Rue, association president.

Checking with Rue, Drager was told that Wilkerson could not be circumvented. Blair's response, upon Drager's so informing him, was, "We'll see about that."

On September 5, 1980, Blair telephoned Duvall, one of the management trustees of the training fund, voicing his desire for a meeting preliminary to "starting up the apprenticeship classes." Duvall replied that that was "the function of the Joint Apprenticeship Committee," of which he was not a member, and promptly informed Wilkerson that Blair wanted a meeting.

Wilkerson in turn called Blair, still on September 5, announcing that the management members of the JAC also wanted a meeting, and would be available the next week. Blair stated that he wanted to deal with Duvall and did not "want to discuss the situation with" Wilkerson. Wilkerson said that Duvall was not on the JAC; that he, Beatty, and Drager had been appointed by management as it was entitled to do "under the law and under the contract"; and that they "intend[ed] to fulfill that purpose." Blair responded, "[I]f you insist upon meeting on this basis, you are just going to cause a strike on October 13," the contract expiration date.

Following that exchange, Wilkerson sent this letter, dated September 5, to Blair:

> This is to reaffirm my telephone call to you this date regarding Asbestos Workers' Local 27 Apprenticeship Training.
>
> The Master Insulators' Association three representatives to the Joint Apprenticeship Committee as called for on page 26, Article XX, paragraph 1, of the Trade Agreement is the same as has served on the Joint Apprenticeship Committee in the past, namely Larry Drager, of Johns-Manville; Bill Beatty, of Owens-Corning; and myself. This committee stands ready as it has in the past to meet with your committee for the purpose of carrying out those duties and responsibilities as set forth under this Article, and again request that your committee meet with this committee so that these requirements can be fulfilled.
>
> This letter is to further reaffirm that the Master Insulators' Association representatives to the Apprenticeship Training Fund as called for on page 13, Article VIII, Section 7, of the Trade Agreement is James T. Duvall, Charles W. Fowler and Jeffrey B. Kean, as you were so advised on January 2, 1980.
>
> It is the belief of the Master Insulators' Association and its members that the Asbestos Workers Industry will continue to have a difficult time in providing a service to the industry customers if you continue to refuse to set a time and date for a meeting of the Joint Apprenticeship Committee.
>
> In an effort to meet the responsibilities of the Joint Apprenticeship Committee as set forth under Article XX, pages 26 and 27 of the Trade Agreement, the representatives of the Master Insulators' Association Joint Apprenticeship Committee hereby request a meeting with the members of your Joint Apprenticeship Committee at 9:00 A.M., Wednesday, September 10; and, also in an effort to comply with your wishes that meetings be held on neutral ground, we have requested the use of a meeting room for the Wednesday morning meeting at the office of the Federal Mediation and space has been provided for the committee's use at that time.

Blair responded by mailgram dated September 8, asserting that it would be "impossible for our Joint Ap-

[3] The labor contract called for "a ratio of one (1) Apprentice or Improver to four (4) Mechanics employed in a shop." Beatty testified that, if new apprentices were not enrolled by late 1980, "we would be drastically out of ratio." It is not unusual to be somewhat out of ratio.

prenticeship Committee to meet on September 10th" and adding that "a letter will follow."

On September 11, Blair again called Duvall about starting apprenticeship classes. Duvall said that that was "the function of" the JAC, and that Blair "would have to deal with Don [Wilkerson]." Blair replied that he "would rather deal with" Duvall.

On September 15, Blair sent to Wilkerson the letter to follow mentioned in his September 8 mailgram. It stated:

> Historically the Apprenticeship Committee and the Apprenticeship Trustees have been one and the same. I am quite sure that was the intent of all parties when negotiating the last trade agreement.
>
> On October 3, 1979, Management Trustees resigned from all funds leaving the Apprenticeship Program without the ability to start the Apprenticeship School. You then advised you would have both an Apprenticeship Committee and Apprenticeship Trustees for a total of six management individuals dealing with the Apprenticeship Program instead of three. You have remained adamant in that position since that time.
>
> It is quite inconceivable that you would expect the Apprenticeship Program to attempt to operate with the requirement of double meetings for handling any action as the Apprenticeship Committee would have no financial ability to carry out any program they would recommend; but would have to make recommendations to the Apprenticeship Trustees for expenditures. To be quite candid, Union Trustees do not have the time to spend in double meetings nor does the Apprenticeship Fund have the money to operate in this manner.
>
> At the present time the Apprenticeship Program is one year late due to this position of management. The Raytown Vo-Tech School which handles our program has advised that due to the shortage of state funds, we must advise them immediately if we are going to have an Apprenticeship School this year or we will lose our state funding. I have contacted Mr. James Duvall, Secretary for the Apprenticeship Program from Management's side and he is unable to authorize the start of this program without your consent. Soon we will be another year behind if we have to wait for state funds to be available next year.
>
> Members of Local No. 27 Apprenticeship Program are anxious to get the Apprenticeship Program active again and fulfill any contract requirements such as ratios, minorities and women. We are willing to meet any time with the three Trustees appointed by the Master Insulators Association on January 2, 1980; James Duvall, Charles Fowler and Jeffrey Kean.
>
> If you wish to change Trustees again, please so advise as we would like to have an Apprenticeship Meeting immediately.

Wilkerson responded by lengthy and painstakingly detailed letter dated September 17. In it, after a paragraph-by-paragraph rejoinder to Blair's letter, he stated:

> May I reiterate as I have since October 3, 1979 that Mr. Bill Beatty, Mr. Larry Drager and I are the Joint Apprenticeship Committee. Mr. James Duvall, Mr. Charles Fowler and Mr. Jeffrey Kean are not, and have never been appointed by the Master Insulators Association to the Joint Apprenticeship Committee. May I also remind you, as I did on September 5, 1980 that the appointment of representatives to committees by Management is Management's right, as the appointments to committees by the Union is the Union's right. Again I herewith request that you please refrain from interfering with Management's rights to decide who their representatives will be on the Joint Apprenticeship Committee and also please refrain from refusing meetings on the subject matter of your letter due to the Master Insulators Association refusal to appoint Mr. James Duvall, Mr. Charles Fowler and Mr. Jeffrey Kean to the Joint Apprenticeship Committee.
>
> In closing, Mr. Bill Beatty, Mr. Larry Drager and I, as the Joint Apprenticeship Committee representing the Master Insulators Association, herewith request a meeting of the Joint Apprenticeship Committee. Due to our inability to get you to discuss a meeting date in the past, we will leave it to you to pick the date and so advise.

There is no evidence that Respondent, by Blair or otherwise, acknowledged the request in Wilkerson's letter for a JAC meeting on a date of Blair's choosing.

Meanwhile, in February 1980, the management trustees of the training fund, with Duvall as their leader, had begun conferring with Respondent's trustees/JAC members, headed by Blair, for the purpose of drafting a mutually acceptable trust instrument. Two "unresolved issues" emerged from a meeting on May 6—whether the trustees would be required to double as JAC members, and whether apprenticeship standards would be incorporated in the trust document. The management trustees argued that those qualified to be trustees likely would lack sufficient craft expertise to serve well on the JAC, and vice versa; and that the standards should be in a separate document. Blair, being of the opposite view on both issues, closed the meeting by saying "no decision can be made" at that time.

On May 29, Duvall called Blair to inquire of the status of the two unresolved issues. Blair said he would be presenting them to the membership at a meeting scheduled for late June. Then, by letter dated May 29, Duvall informed Blair, in essence, that the Association would be agreeable to "one single committee," provided the apprenticeship standards were not embodied in the trust agreement.

On July 22, Duvall again asked Blair about "the two outstanding issues," being told that there had been no resolution. Duvall put much the same question to Blair once more on August 5, receiving the same answer. Again on August 20 and 22, incidental to conversations between the two about other matters, Blair replied in the same fashion.

By letters dated July 25 and August 22, Association President Rue expressed to Blair his concern "over the lack of progress in getting the apprenticeship program going," urging Blair's "immediate attention and cooperation." Blair replied by letter dated August 28, noting that the resignations of the management trustees from all the funds had left "the entire operation crippled"; proclaiming surprise that Rue was not "interested in resolving all trusts instead of just worrying about the Apprenticeship Fund"; asserting that "we are making progress on all funds"; and closing, "Rome was not built in a day and playing catch-up takes time."

Finally, on an undisclosed date in October, Duvall asked Blair for "the last time" if they could "resolve" their differences and sign a trust agreement. Blair, as before, answered in the negative.

On October 14, with the expiration of the contract, Respondent called a strike. It continued into January 1981.

On or about October 20, during a meeting of Blair, Rue, and a Federal mediator, Blair declared that Respondent wanted "unilateral control" over the "day-to-day workings of the apprenticeship committee"; and that it wanted only "industry-related" people, as opposed to "professionals," on the JAC, but would be "willing to deal with Duvall, Kean, and Fowler as far as the trust was concerned." Duvall and Kean, as staff people for the Builders' Association of Missouri, were labor relations professionals.

During a bargaining session on October 29, Wilkerson, as the Association's spokesman, suggested that the apprenticeship matter be deferred, permitting consideration of other issues, in view of the "strong feelings from both sides" concerning it. Blair countered that, until the Association "capitulated . . . to the Union's demands on the apprenticeship . . . [they] could not discuss other issues." Blair made a similar declaration during the next session on October 31.

On November 19, the Association issued this statement and offer to Respondent:

> Due to the Union's refusal to negotiate on other items until such time as Management agrees to either the doing away with the Apprenticeship program or agrees to an Apprenticeship program operated solely on a day by day basis by Union representation without Management; and due to the damage being done to the industry as a whole, we as an Association hereby offer the Union an increase of $1.40 per hour effective now and to leave the rest of the contract as it is with an expiration date of July 1, 1981. This offer is made in an effort to allow both Union workers and Union Management to continue to service their customers while the parties explore possibilities as to a solution to the Apprenticeship problem. It is further proposed that the negotiation committees meet on a monthly basis over these seven months prior to expiration in an effort to resolve the Union's Apprenticeship problem before the agreement expires on July 1, 1981.

Nothing came of that, and, on December 3, the general president of Respondent's parent International, Andrew T. Haas, sent mailgrams to Blair and Rue asking that they meet with him in Washington, D.C., "in an effort to end this industry-damaging work stoppage." In the resultant meeting, on December 9, Haas announced that he was taking the apprenticeship issue "off the table," and admonished Blair and Rue not to put it "back on the table." The issue nevertheless was discussed. Rue evinced a willingness to accede to Respondent's demands that the same people serve both as trustees and on the JAC, and that they be "industry-related people."

A new labor contract, settling the strike, was entered into on January 13, 1981. With regard to the apprenticeship training program, it provides:

> [T]he apprenticeship program will remain as is, with the understanding that a trust agreement mutually agreed to will be executed in order to protect the legality of the fund. Management will provide three trustees to this fund, who will be industry related.

The Association thereupon appointed Beatty, Drager, and Glen Tomlinson to serve as its "apprenticeship fund trustees." Tomlinson, like the other two, was employed in the insulation industry. Separate JAC members were not named.

By letter to Blair dated February 24, 1981, Beatty, "as a delegated spokesman for" the Association, asked for "a meeting of the apprenticeship committee." He cited "a number of problems that need to be resolved before we can advertise for new apprentices." Blair replied by letter dated March 2 that he was "in full accord . . . that it is important to have this meeting"; that, "due to the long strike, we are playing catch-up with all the trust funds"; that he would let Beatty know "when time is available for this meeting"; and that he felt the trust agreement should be "the number one item on the agenda."

That, apparently, was the last development preceding the hearing.

B. *Conclusions*

It is concluded that Respondent violated Section 8(b)(1)(B) and (3) as alleged.

Summarizing the facts of immediate pertinence to the alleged misconduct, the JAC did not meet between September 5, 1979, and the time of the present hearing. Blair repulsed Beatty's proposal of March 1980 that there be a meeting to get the apprenticeship program "back on track" by declaring that Wilkerson had "no business being on the committee," and was unmoved by Beatty's like overtures in the ensuing few months. Similarly, when Drager asked in June 1980 that a labor-management meeting sought by Blair have the apprenticeship situation on its agenda, Blair remarked that Wilkerson's presence would be "anti-productive," and suggested that he be left "at home."

Then, Blair proclaimed to Wilkerson on Septenber 5, 1980, in response to Wilkerson's disclosure that the management members of the JAC desired a meeting the fol-

lowing week, that he did not "want to discuss the situation with" Wilkerson, but instead wanted to deal with Duvall, who had not been appointed to the JAC; and further stated in the same conversation, "[I]f you insist upon meeting on this basis, you are just going to cause a strike on October 13."

After that, replying to Wilkerson's letter of September 5 requesting a JAC meeting on September 10, Blair asserted by mailgram dated September 8 that a meeting on September 10 would be "impossible"; then, by letter to Wilkerson dated September 15, he rejected the idea of the training-fund trustees and the JAC members not being "one and the same," and expressed the willingness of Respondent's apprenticeship designates to meet only "with the three Trustees appointed by the . . . Association on January 2, 1980: James Duvall, Charles Fowler, and Jeffrey Kean."

Finally, Blair apparently ignored altogether the request in Wilkerson's letter of September 17 for a JAC meeting on a date of Blair's choosing; and the weight of evidence leaves no doubt that further strivings to that end by Wilkerson or his management colleagues on the JAC would have been a futility.

By thus refusing to meet with those designated by the Association to be its JAC representatives, initially because of Wilkerson's participation and later, professedly, because the Association's JAC designates and its training-fund trustees were not "one and the same," and by Blair's statement that the Association would "cause a strike" should it "insist upon meeting on this basis," Respondent failed to bargain in good faith as required by Sections 8(b)(3) and 8(d),[4] and restrained or coerced the Association "in the selection of [its] representatives for the purposes of collective bargaining," violating Section 8(b)(1)(B). E.g., *United Mine Workers of America, Local No. 1854 and United Mine Workers of America (Amax Coal Company)*, 238 NLRB 1583 (1978); *Graphic Arts International Union, Local No. 280 (Samuel L. Holmes)*, 235 NLRB 1084, 1097 (1978); *Sheet Metal Workers International Association Local Union No. 38 (Elmsford Sheet Metal Works, Inc.)*, 231 NLRB 699 (1977).

Respondent's argument is rejected that Wilkerson, Beatty, and Drager, as the Association's appointees to JAC, were not bargaining representatives of the Association for purposes of the Act, and that Respondent therefore could not have violated Section 8(b)(1)(B) and (3) regardless of its attempts to dictate whom the Association designated. The decisions from which this argument derives concern trustees of joint trust funds under Section 302(C) of the Act, their rationale being that the fiduciary obligation attending such trusteeships to act solely in the interests of the trust beneficiaries precludes the trustees' acting on behalf of labor or management in a bargaining sense. *United Mine Workers of America, Local No. 1854 (Amax Coal Company), supra*, 238 NLRB at 1588; *Sheet Metal Workers' International Association (Central Florida Sheet Metal Contractors Association)*, 234 NLRB 1238, 1246–48 (1978). By resigning as trustees of the training fund in September 1979, Wilkerson, Beatty, and Drager plainly removed themselves from this category.

Also rejected is Respondent's contention that the Association's departure in 1979 from the traditional practice of having the same people double as training-fund trustees and JAC members was an improper unilateral change, and that Respondent therefore was justified in not dealing with the Association's separate JAC group. Section 10(b) of the Act bars one from defending against a refusal-to-bargain allegation by citing another's misconduct which occurred more than 6 months before any charge was filed giving rise to the issue. *Tahoe Nugget, Inc. d/b/a Jim Kelley's Tahoe Nugget*, 227 NLRB 357 (1976), enfd. 584 F.2d 293 (9th Cir. 1978). See also *Local Lodge No. 1424, International Association of Machinists, AFL-CIO; and International Association of Machinists, AFL-CIO [Bryan Manufacturing Co.]* v. *N.L.R.B.*, 362 U.S. 411 (1960).

Rejected, finally, is Respondent's argument that the present dispute is "rooted in the parties' differing interpretations of the contract language," and that the Board therefore should defer to the grievance arbitration machinery of the labor contract under the doctrine of *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), and *Roy Robinson Chevrolet*, 228 NLRB 828 (1977).[5] As is concluded in the paragraph immediately preceding, Section 10(b) removes from consideration the propriety of the Association's departure from the traditional practice of doubling its training-fund trustees as JAC members, which is the only arguable issue of contract interpretation that might be raised. That leaves just the question of Respondent's refusal to deal with the Association's designated JAC representatives, which "is not a matter to be deferred to arbitration, but rather one which requires the Board to invoke its jurisdiction and exercise its expertise." *Native Textiles*, 246 NLRB 228, 229 (1979).

ORDER[6]

The Respondent, International Association of Heat and Frost Insulators and Asbestos Workers Local Union No. 27, AFL-CIO, Raytown, Missouri, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with the Master Insulators Association, Inc., as concerns apprenticeship training or any other mandatory subject of bargaining, or from restraining or coercing the Association in the selection of its representatives for the purposes of collective bargaining, by refusing to meet or deal with those designated by the Association to represent it, or by threatening to strike as a means of dictating to the Association

[4] While the complaint alleges that the strike threat violated only Sec. 8(b)(1)(B), that conduct, in the circumstances, clearly violated Sec. 8(b)(3) as well.

[5] Art. 5 of the 1977–80 labor contract set forth a procedure for the resolution of disputes "arising out of the interpretation of this Agreement," the culminating step being "final and binding" arbitration.

[6] All outstanding motions inconsistent with this Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

whom it should or should not select to represent it for purposes of collective bargaining.

(b) In any like or related manner refusing to bargain collectively with the Association, or from restraining or coercing the Association in the selection of its representatives for the purposes of collective bargaining.

2. Take this affirmative action:

(a) Upon appropriate request, bargain with those designated by the Master Insulators Association, Inc., to represent it as concerns apprenticeship training or any other mandatory subject of bargaining, with regard to the employees in the appropriate multiemployer bargaining unit.

(b) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 17, after being signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Furnish to said Regional Director sufficient signed copies of said notice for posting by the Master Insulators Association, Inc., and its employer-members whose employees comprise the appropriate bargaining unit, should they be willing, at those places where notices to employees customarily are posted.

(d) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain in good faith with the Master Insulators Association, Inc., as concerns apprenticeship training or any other mandatory subject of bargaining and WE WILL NOT restrain or coerce the Association in the selection of its representatives for the purposes of collective bargaining, by refusing to meet or deal with those designated by the Association to represent it, or by threatening to strike as a means of dictating to the Association whom it should or should not select to represent it for purposes of collective bargaining.

WE WILL NOT in any like or related manner refuse to bargain collectively with the Master Insulators Association, Inc., or restrain or coerce the Association in the selection of its representatives for the purposes of collective bargaining.

WE WILL, upon appropriate request, bargain with those designated by the Master Insulators Association, Inc., to represent it as concerns apprenticeshop training or any other mandatory subject of bargaining, with regard to the employees in the appropriate multiemployer bargaining unit.

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS LOCAL UNION NO. 27, AFL-CIO